UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 22-11068 (JTD)
FTX TRADING LTD., *et al.*,	.
	. (Jointly Administered)
	.
	. Courtroom No. 5
	. 824 North Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Tuesday, June 25, 2024
. . . . .	. 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Adam Landis, Esquire
LANDIS RATH & COBB LLP
919 Market Street
Suite 1800
Wilmington, Delaware 19801

Brian Glueckstein, Esquire
Andrew Dietderich, Esquire
Alexa Kranzley, Esquire
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

(APPEARANCES CONTINUED)

Audio Operator: Jermaine Cooper, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Moskowitz Law Firm and Boies Schiller Flexner:	Jason Rosell, Esquire PACHULSKI STANG ZIEHL & JONES LLP One Sansome Street Suite 3430 San Francisco, California 94101
For Sunil Kavuri, Ahmed Abd El-Razek, Pat Rabbitte:	David Adler, Esquire MCCARTER & ENGLISH LLP Worldwide Plaza 825 Eighth Avenue 31st Floor New York, New York 10019
For the Ad Hoc Committee:	Matthew Harvey, Esquire MORRIS, NICHOLS, ARSHT & TUNNELL LLP 1201 North Market Street, 16th Floor P.O. Box 1347 Wilmington, Delaware 19899
For the Celsius Litigation Administrator:	Seth Lieberman, Esquire PRYOR CASHMAN LLP 7 Times Square 40th Floor New York, New York 10036
For Steadview Capital Management:	Dylan Marker, Esquire PROSKAUER ROSE LLP Eleven Times Square Eighth Avenue & 41st Street New York, New York 10036
For LayerZero:	Stephen McNeill, Esquire POTTER ANDERSON & CORROON LLP Hercules Plaza 1313 North Market Street, 6th Floor P.O. Box 951 Wilmington, Delaware 19801

APPEARANCES (CONTINUED):

For the Committee of Unsecured Creditors: Kenneth Pasquale, Esquire
PAUL HASTINGS LLP
200 Park Avenue
New York, New York 10166

INDEX

(Proceedings commence at 10:03 a.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Thank you. Please be seated.

Mr. Landis.

MR. LANDIS: Good morning, Your Honor. May I please the Court, Adam Landis from Landis Rath & Cobb on behalf of FTX Trading Ltd., and its affiliated debtors.

Your Honor, we are here today with five matters on the agenda. We are going to just walk right through them if it pleases the Court.

With respect to the first two matters, one and two, those have been adjourned by agreement of the parties. This is the Celsius Litigation Administrator's motion for relief from the automatic stay to assert claims in the New York Celsius proceeding. The debtors, the JOL's and the Celsius Litigation Administrator painstakingly negotiated a tolling and scheduling agreement with respect to this matter that we would expect to file under certification of counsel hopefully later today after a couple of nits of picked on the document itself.

We need to toll the statute of limitations by agreement for the Celsius Litigation Administrator's potential claims. We have agreed to that in order to adjourn the hearing to the July 17th hearing. So, we expect to

submit that and schedule our -- the agreement also will have scheduling provisions for our responses and for that matter, the lift stay matter, going forward. I think that covers that.

With respect to matter number three we are resolved. So, we need not dwell on that. That will take us into the disclosure statement matters. Before we get to that Mr. Dietderich would like to address the Court.

THE COURT: Thank you.

Mr. Dietderich.

MR. DIETDERICH: Good morning, Your Honor. For the record Andrew Dietderich, Sullivan & Cromwell.

Your Honor, our disclosure statement and solicitation procedures presentation today will have three of us talking. I would like to give a little bit of background of some general points about how we got here and where we are going. Mr. Glueckstein will address the objections that we received and then Ms. Kranzley is prepared to walk the Court through the solicitation procedures and detailed comments on all of that.

THE COURT: Okay.

MR. DIETDERICH: So, Your Honor --

THE COURT: I'm intimidated by the very large binder you have sitting on your desk.

(Laughter)

MR. DIETDERICH: The disclosure statement, at least in the handheld version, is a document that, obviously, has been a huge team effort by many, many people not just for the debtors but for all of our supporting stakeholders. It goes through unusual detail in explaining the background of the decisions that underly the plan and that this process has stakeholder input and collaboration that we followed from the beginning of the case. This includes not only plan formation, but really consultation with all of our creditor constituencies on every major decision we have taken in the case. And that more than anything else, I think, has allowed us to be in this position where we're contemplating a largely consensual process going forward with our key stakeholders.

There are a few elements of the plan and the disclosure statement, Your Honor, that I think merit pointing out to the Court this morning. The first is substantive consolidation. The plan consolidates the estates of most of the debtors. Now in the Third Circuit substantive consolidation is an extraordinary remedy. We are told we should only do it when we really need to but I think the debtors and all of the stakeholders are convinced that this is the paranematic case where we do really need to substantively consolidate the estates.

We estimate it would cost hundreds of millions of dollars to disentangle FTX and create individual standalone

estates. Even doing that will result in something arbitrary and ultimately unsatisfactory. We also believe that we passed, I think, the ultimate test in case law substantive consolidation in that everybody is better off because we're doing it. That remains a critical component of our plan.

Now, that relates to a corporate governance point. We arranged our affairs at the beginning of the case with a possibility of substantive consolidation. Your Honor may remember, but it bears pointing out, our unusual governance structure for these estates. We have separate independent directors on the board of each of the top companies of each of the four silos that we had at the beginning, but all of the independent directors generally have met as a joint board overseeing operations from the beginning. We have had 56 meetings with the joint board of directors since the filing of the case.

Each of the directors has therefore been involved in supervision of the entire FTX business, not only the part that relates to the entity for which they are nominally responsible but for all the asset dispositions across the capital structure. That allows us, because decisions have generally been made fully informed and unanimously by the joint board, for everyone to be comfortable that everything we have done has been at the interest of all the entities regardless of which entity might, at the end of the day, have

a particular interest in, say, the sale proceeds.

I think that has built a very strong record as we come into Court now focusing on a substantive consolidation plan that everyone is comfortable with that, at least, from the board of directors and from a governance perspective. We also have benefited, of course, from the fact that we have had a single committee, a single committee representing all of the creditors across all of the FTX debtors and been able to consult with them and run things on a unified basis as well.

The most important fact about the plan, of course, is that its largely consensual. Mr. Glueckstein will address the few objections that we have so far that we're contemplating but the pertinent fact today is the extraordinary absence of objections from any of the major stakeholders with whom we have engaged. That includes not just the committee, it includes the ad hoc committee of non-US customers representing about $4 billion of customer claims; it includes all of the original adversary proceedings of customer property that were filed against us, not the newer one but the original actions; it includes all of the Chapter 11 debtors that we had collisions with, debtor on debtor collisions with, raising very difficult issues; it includes BlockFi, one of our largest single creditor; it includes all of the government constituencies with the

exception of some disclosure objections from a couple states that we have resolved today, we hope consensually.

To do that we kind of -- that was a strategic focus. We recognize that on our fact patter plan litigation would be very difficult and very, very expensive. So, from the beginning we thought about how do we build a plan process that has as much consensus and buy-in as possible. To do that we include in the plan several really important settlements.

The first, of course, is our settlement with the joint official liquidators of FTX DM. The settlement creates a single economic unit so that creditors can receive an economically equivalent distribution regardless of whether they put in a claim under the US proceeding and the Bahamas proceeding, but yet also includes precautions that allow us, as the debtor, and the joint official liquidators, as fiduciary, to make sure that any payments and distributions are being made in a way that is consistent with, you know, both sets of laws. They have been a remarkable partner in that effort.

I would have to say that we had a lot of concerns about how to operationalize that and there still is work to be done. It’s not novel ground. Nobody has quite done it this way before, but the relationship is a strong working relationship and everybody is pulling in the same direction.

The plan, of course, includes a settlement of one

of the central issues we have in our case which is the balance of relative entitlements between customers and non-customers. We built consensus among the key customer communities and the key non-customer communities on the balance of that -- kind of the balance that we struck in the plan.

Now the debtors expect this consensus approach to continue. We are not done making decisions. We have agreed with our major creditor groups on continuity of governance going forward. The current board, the joint board will be augmented by two representatives of the joint official liquidators and one creditor appointee. Creditor constituencies will have additional input through our creditor advisory committee. All of this is explained in the recent changes for the disclosure statement that we filed on the docket recently.

Of course, the plan still needs to resolve the customer property issue. We have known that from the beginning of the case. It needs to do so because that issue is relevant to so many people, millions of people. It needs to do so in a uniform way that resolves all of the various customer property litigation claims that we face. We continue to be committed to do that collectively in a plan process.

Now here there is also a very strong consensus

view. Its not unanimous yet, but a very strong consensus view certainly among everybody around the table as we were forming the plan on what to do. The answer is that customers are, indeed, special. Something happened that requires a special remedy for customers and that remedy is the customer priority settlement that is described in the disclosure statement. The settlement creates a priority intercompany claim from the exchanges against the general pool for the benefit of not an individual customer versus other customers, but the benefit of all the customers in an exchange versus the general pool.

Under our current economic forecasts, we are expecting to pay creditors in full in terms of petition time value. That priority settlement may not effect the amount of the returns on the simple basis that everybody is going to be paid, but it's still an important component of the plan because it creates a downside priority in favor of customers and it may speed the pace of distributions. In other words, it may be possible that that priority would conclude that we can pay customers a little bit earlier than other creditors to the extent we need to set up less reserves because of the way the priority works.

The other key assumption, or one of the other key assumptions behind the plan, and a very obvious one, the elephant in the room, is the subordination of government creditors. This is a critically important provision of the

plan, indeed. FTX is not solvent. We are not a solvent estate, far from it. We are a long, long way away from solvency and no change in the market that we could ever anticipate would create a solvent FTX. We owe government stakeholders billions and billions of dollars.

Now, we have for over a year been in discussions with those government stakeholders on why they should subordinate voluntarily to non-governmental creditors. And there is several bases for this under law. Each of the various government agencies, including around the world, have principles and circumstances of criminal fraud that suggest that the government authority should consider subordinating to victims. Unfortunately, for us none of those laws would necessarily define a victim who are compatible in the same way.

One of the central pieces we have been working on for a very long time is the idea that really all creditors are, to some extent, victims here and all creditors can be treated as victims by the government constituencies. That allows us to coordinate the bankruptcy distribution scheme with the distribution schemes for remission and restitution and disgorgement under various systems of criminal law. There is also a tax -- you know, informing the tax settlement that Your Honor approved is also a concept under tax law of some voluntary guidance to the IRS to consider subordination

to the victims of criminal fraud.

So, we have taken all of that and we have made a proposal, first confidentially and now quite publicly, to all of the governments involved to voluntarily subordinate to the consensus rate of interest, which I will talk about in just a moment, and also potentially to the extent there are recoveries that exceed that 9 percent. Although we have some commitment if the IRS settlement is approved by the IRS, a very, very important settlement.

We have, I think, an understanding, now approved by the Bahamian Court, with the joint official liquidators that it works under Bahamian law; we do not yet have the agreement of the CFTC, the Department of Justice Southern District of New York in the criminal proceeding, or any of the states; however, I am pleased to state that those conversations are very advanced and they are to a point where I think the entire debtor team and all the consulting professionals are confident that we are ready to launch. And we hope to be dotting the I's and crossing the T's of those settlements, you know, relatively quickly.

Now let me talk a little bit about value. You know, the best headline we could possibly have is that 98 percent of our creditors are expected to receive 119 percent of the petition time claims within 60 days of the effective date. That is the convenience class. We have defined the

convenience class broadly to include, you know, at a recovery level that does include 98 percent of the people. That is important because its going to take a while to make distributions here given the sheer number of claims that we have and the need to do a claims reconciliation process. We think that is a fair convenience class treatment. We think it's a sensible convenience class treatment and, you know, we have, again the support of all of our stakeholders on those convenience class levels.

With respect to our cash position, we do continue to move our assets into cash. As described in the disclosure statement, very important to remember in our case that unlike the other cryptocurrency cases our assets generally did not consist of digital assets segregated in an exchange that had any relationship with claims against the exchange. The segregated asset pools for the exchanges were very significantly defeated, less the one percent of the bitcoin that was supposed to be at the exchange was at the exchange.

So, our project has been a different project then those other cryptocurrency cases. Our assets that we needed to monetize are a mind-blowingly diverse collection of assets, of scattered assets, venture assets, coin positions, digital assets of all shapes and flavors, of course litigation assets, etc. So, our job has been to monetize this pool of assets. And when we look at this pool of assets

the board of directors have been very focused on one central observation which is these were purchased with misappropriated money. No one made a decision to invest in these assets. They made a decision to either lend money to Alameda or they made a decision to invest in FTX.com or FTX US. So, everybody was an involuntary investor in this crazy pool of assets.

Our job has been to turn them into cash. We have not done so -- we have so deliberately and we have done so consistently and we have done so with really a nice runway established by the bankruptcy. We have been able to average out a position and do it gradually and deliberately over time.

When we filed the initial disclosure statement on May 22nd our cash position was $9.9 billion. Today its approximately $11.4 billion. That is Fiat cash in banks. We anticipate, as we say in the disclosure statement, being a $12.6 billion in cash on the effective date assuming an October 31st effective date. Now crypto prices are unpredictable, those numbers may change, but I can confirm today, Your Honor, that we do continue to believe the DS recovery projections, as of the date I stand here, are reasonable projections.

I'd like to talk just very briefly about the consensus rate. This is really a lynchpin to the plan. It

simultaneously resolves a number of the pending disputes we have with stakeholders. It's important, in the first instance, in the understanding we have with the customer representatives and constituencies who continue to be settling the customer property allegation or constructive trust allegations in particular in connection with the plan. So, we see the consensus rate is not justified by the -- in the normal way of bankruptcy is a question of we're a solvent debtor and we want to make an equity distribution.

We are not making an equity distribution. We are an insolvent debtor. We see the consensus rate driven by this network of settlements. One with the customer property advocates. One with the IRS, this was an important component of the IRS discussions, its been tabled in the discussions with the CFTC and the SDNY and the other government stakeholders as a fair level of ultimate recovery. It has something to do with the balance of interest between customers and non-customers because we have had the customers agree that we can make this 9 percent consensus rate available to non-customer creditors as well.

Now if somebody has a lower contract rate we adjusted, but generally the 9 percent is available to all of the creditors, again, on the basis assumption which we have had to advocate for consistently in the case, but we believe its true, that all creditors are, to some extent, a victim of

fraud.

You will note, Your Honor, that the consensus rate also is -- would be the prejudgment rate on the date we filed the petition for a constructive trust or a turnover action as well. Now we have more money than 9 percent potentially and this is important for everybody to understand is that we are not standing here guaranteeing anyone that there will be recoveries greater then, you know, par 9 percent but our plan does need to contemplate the possibility of incremental recoveries.

What happens to these incremental recoveries is not for us to decide unilaterally. Its mostly to be decided by the government stakeholders who are allowing the incremental recoveries to creditors by foregoing their own distributions in the case. There is a question buried here which is what do you do with the extra money, who gets it. We have wrestled with that question with all of our constituencies, had many, many discussions about the right approach and I think the consensus certainly of everyone who has been most involved with the debtor in wrestling with these discussions.

The consensus is that a pro rata approach continues to be the fairest approach, that all creditors were involuntary creditors to FTX, that ultimately claims are traded in dollars since the petition time and that if we have

any excess recoveries or upside recoveries, we should be sharing that with all customers equally. Now, of course, not everybody agrees on that. Some people might have a position that they want more of that then the creditor sitting next to them, but I think the view of the debtors, the view of the government stakeholders, again, their decision but, you know, the growing consensus is reflected in the plan that this money should be available to all creditors.

Now there is a little nuance there, because of the nature of the government regulatory claims the -- although I want to say a trade creditor, and we have very little trade, Your Honor, but a general unsecured creditor would receive interest at the consensus rate. The general unsecured creditor would not have access to the supplemental remission fund that we proposed to the CFTC. That would be available only to customers and lenders that effectively have cryptocurrency contracts.

Now ultimately, Your Honor, the plan is a complex settlement and it includes all these settlements of all of these potential disputes that would need to be resolved by litigation. So, we see it as a complex settlement and although it is remarkably consensual already, we do -- we are soliciting a vote and one of the purposes of the vote is to get feedback from the creditors who have not been involved in that settlement. So, we are soliciting broadly, right,

despite the almost payment in full nature of the plan.

We will continue to press forward with that approach. The plan is structured, however, Your Honor, to be fair and equitable to each class independently. We are proceeding with the absolute priority rule and so are options at confirmation depending on the voting results are flexible.

I want to speak last about two points and these are the two conditions to the plan. So, there is two settlements, two key settlements, that Your Honor has already approved: the IRS settlement and the Bahamian settlement. That was necessary because those settlements are really existential. Our plan does not work without the IRS settlement and our plan does not work without the Bahama settlement. So, we frontloaded that and had the Court approve those settlements and the other parties approve those settlements as well. So, they are done.

Now they're contingent upon the confirmation of our plan. So, if our plan isn't confirmed we lose those settlements and simultaneously if there was some problem with the settlements, and we don’t anticipate any problem, we wouldn’t be able to confirm the plan. So, those are embedded in the plan as essential conditions.

The ongoing discussions with the other governments stakeholders, because the pace of some of those is uncertain, are not embedded as specific settlements that are conditions

to the effectiveness of the plan. The CFTC proposal may not be accepted by the (indiscernible) in its current form, that may change. You know, the eligibility for the supplemental enrichment fund may be tweaked, right, or they could have different views on the calculation of something. Again, we don't expect material changes, but those are not inked.

Similarly, we do not yet have state buy-in among the states to join the CODC in subordination. Its possible that some states don't agree. Again, we don't expect that to have a material effect on recoveries, buts its possible. Then finally the forfeiture proceeds with the SDNY. We do not yet have an agreement with the SDNY that they will give us all the money. We have asked for it. We believe we have a strong case for it. In fact, we believe that the amount of those forfeiture proceeds has something to do with the assistance the debtors have provided to the government, but that isn't inked as well and so it's possible that there's modifications to that, understanding that we don't get all the proceeds that a portion is held back, etc.

Again, we don't expect that to have a material effect on recovery, but I think it's important for everybody to understand the exact nature of those unlike the other two settlements are not conditions to the effectiveness of the plan and the plan has, you know, kind of a pot plan element to it, right, we will do as well as we can in those

circumstances and we think we're very competent with our disclosure about where its trending but the results may be slightly different just like we might sell an asset for a little bit less or a little bit more than we had modeled or very importantly, in our case, the claims pool may change such that it has an influence on recoveries.

Again, as I stand here today, Your Honor, probably the most important financial statement is just what I said before which is that based on everything we know, and all the moving pieces, and all the work that has been done, we think the projections in the disclosure statement about recoveries, the bottom line recoveries to customers, are fair and reasonable, you know, as of the moment I stand here.

So, that is what I had, Your Honor. Now I am happy to answer general questions, but absent those I thought I would turn over the podium to Mr. Glueckstein and he can talk a little bit about the objections and our path forward.

THE COURT: I don’t have any comments or questions. Thank you very much.

Does anyone else -- let me just ask, because I gave you the opportunity to speak generally, does anybody else wish to make any general comments before we get to the disclosure statement hearing?

(No verbal response)

THE COURT: Having heard nothing, Mr. Glueckstein,

you're up.

MR. GLUECKSTEIN: Thank you, Your Honor. Good morning again. Brian Glueckstein for the debtors.

Your Honor, the broad support for the plan and the disclosure statement that Mr. Dietderich highlighted are illustrated today by the lack of objections filed in response to relief that is before the Court this morning. We received only a grand total of 14 objections and other responses to our motion seeking approval of the disclosure statement and solicitation procedures.

The debtors have worked with the objectors to resolve the disclosure statement objections where possible and have now resolved most of them with the objectors and all other parties rights reserved with respect to plan confirmation and any confirmation objections. We currently have only all or a portion of four objections remaining this morning, Your Honor. The objections filed by the MDL co-lead counsel and by McCarter & English on behalf of Mr. Kavuri and three other purported creditors, as well as, I understand, the non-disclosure portions of objections from LayerZero and Maps Vault. That is all that is live before Your Honor this morning. We did address these and the other objections that are now resolved in the debtors reply that was filed at Docket No. 18083.

Your Honor, the debtors submit that the disclosure

statement contains more than adequate information as provided in compliance with Section 1125(a)(1) based on the facts and circumstances of this case. Mr. Dietderich walked through a number of elements that are highlighted in the disclosure statement in his remarks. I will address, Your Honor, some threshold issues relating to each of the remaining objections and then request to reserve some rebuttal until after any objectors are heard by Your Honor this morning.

Your Honor, the first of our two objections that remain pending in full is the objection that was filed by the MDL co-lead counsel. Your Honor, with respect to the MDL co-lead counsel, as a threshold matter, the debtors submit that MDL counsel lacks standing to object to the debtors disclosure statement and plan of reorganization. The debtors have elsewhere documented, in filings with this Court, MDL counsel's efforts to divert up to $1.2 billion in assets forfeited by the Department of Justice to the MDL for purposes of pocketing up to $400 million for themselves in fees while depriving the estate and their creditors of those funds.

Those fatally flawed efforts aside, MDL counsel needs to establish standing to object to the debtors plan and disclosure statement if they want to be heard in these proceedings before Your Honor today and in the future. We submit they cannot do so. The Third Circuit has made clear

that Section 1109(b) permits anyone with a legally protected interest that could be effected by the bankruptcy proceeding to be heard. The Supreme Court's recent decision in Truck Insurance confirms the debtors view. There the Supreme Court confirmed that even interpreting Section 1109(b) broadly, the statute still requires a party to be "directly and adversely effected by the bankruptcy proceedings." The MDL are not effected at all.

Of course, a party must still satisfy both the constitutional and prudential limitations of standing. In this context, standing requires that a party actually have an interest in these Chapter 11 proceedings. MDL counsel, in their capacity as such, have no personal stake in these proceedings. They are not creditors with claims and their own objection makes clear that the putative class claims being asserted in the MDL proceeding do not include any claims against the debtors, nor, Your Honor, do they represent a certified class of FTX customers as they misleadingly suggest. That would be impossible because there is no certified class in the MDL.

They have not sought class status from this Court pursuant to Bankruptcy Rule 7023 as would be required to object on behalf of a putative class as this Court made clear recently in Mallinckrodt. Furthermore, MDL counsel do not identify any creditors whom they represent with respect to

creditor claims in these Chapter 11 cases. If they did, any such representation would need to be disclosed pursuant to Bankruptcy Rule 2019 before they are heard. They have not done so. Such disclosure and such representation would put their status as impartial putative class counsel at risk.

MDL counsel here are further removed from any interest in the debtors plan then those parties in recent decisions, we cite in our papers, where creditors were determined to lack standing including in the Genesis Global case where out of the money equity holders were deemed to lack standing to object to the plan because it had no direct interest in the distributions being made under the plan.

The MDL objection itself raises a litany of issues that do not implicate any rights or interest of MDL counsel or any of the named MDL class plaintiffs in that capacity. Courts have repeatedly held that an objecting party can only challenge the parts of the plan that directly implicate their own rights and interests. Nothing in our plan prevents MDL counsel from pursuing direct causes of action held by their named plaintiffs in the MDL and to recover on any such claims for their putative class there. Of course, individual creditors are free to decide whether to support or oppose the plan the debtors are proposing as creditors in these Chapter 11 cases. The MDL counsel cannot subsite their views for those of creditors on a classified basis.

Now, Your Honor, with respect to the objection itself that they filed the debtors did, nonetheless, carefully review the arguments presented in that objection and combined with the changes that have already been made to the disclosure statement that was filed with the Court over the weekend we do not believe there is any additional disclosure required to address them in order to satisfy Section 1125.

Although not required, the debtors did add a description of the MDL proceedings in Section (g)(10) of the disclosure statement. The MDL objection also takes issue with disclosure about the anti-double dip provision in Section 7.12 of the plan. There is no uncertainty or ambiguity with respect to this provision which is supplemented by the plain language disclosure on page 8 of the disclosure statement. The discretion to request information in that provision is consistent with standard tax and OFAC certifications required prior to making distributions under a plan similar to Section 7.14 of this plan and others confirmed by this and other Courts in the district.

All creditors -- MDL counsel has also argued in their objection, substantively, that the anti-double dip provision, which is a focus of their objection, violates Section 1123(a)(4) because it somehow unfairly discriminates

amongst customers. We discussed this in our papers, but this is untrue. The case law is clear that differing recoveries are not the same as disparate treatment for claims under a plan. All creditors are provided the same treatment as other creditors in each class. Any of those creditors can object to the plan on the basis of the substance of that provision and its impact, if they see fit, in connection with confirmation. That is not an issue for the disclosure statement.

The MDL objection also argues there should be more disclosure as to the implications of the customer property issues while ignoring the four sections in the disclosure statement dedicated to the customer property issues and this proposed settlement that was entered into for the benefit of stakeholders. The other various issues raised in this objection are plan objections to be addressed later, if necessary, Your Honor.

The other objection that we have --

THE COURT: Let's deal with --

MR. GLUECKSTEIN: You want to do them one at a time?

THE COURT: Yeah, let's do one at a time.

MR. GLUECKSTEIN: That's fine, Your Honor.

THE COURT: Let's do the MDL plaintiffs' counsel first.

MR. ROSELL: Good morning, Your Honor. Jason Rosell, Pachulski Stang Ziehl & Jones, on behalf of the Moskowitz Law Firm and Boies Schiller Flexner LLP in their capacity as plaintiffs co-lead counsel in the FTX MDL which is pending in the United States District Court for the Southern District of Florida. Joining me today in the courtroom, Your Honor, is Adam Moskowitz of the Moskowitz Law Firm. We also have Marc Ayala at Boies Schiller, and Mr. Robert Leaf who is also on the MDL leadership.

THE COURT: Okay. Let's deal with the fundamental question here.

MR. ROSELL: Yes, Your Honor.

THE COURT: How do you have standing? These are -- you represent a law firm. Your entry of appearance is for a law firm, not on behalf of the individual plaintiffs in the MDL action, correct?

MR. ROSELL: That is correct, Your Honor. I think it goes to the question what is -- who are we, what is the MDL. The MDL is a multi-district litigation. It is, for the record, captioned *In Re FTX Cryptocurrency Exchange Collapse Litigation*. It consists of approximately 50 consolidated class action securities actions and individual actions globally. We have together in excess of 100 individual defendants and as a result of that and as a result of the Moskowitz Law Firm and Boies Schiller being appointed the

plaintiffs co-lead counsel by the District Court in the Southern District of Florida, they represent and speak for those clients. They are those clients. Those 100 individuals are their clients.

THE COURT: They're not the clients. They represents the clients. They don't have a claim against this estate, correct?

MR. ROSELL: We have not asserted a claim against the estate -- well, but --

THE COURT: And they are not here -- and you are not here telling me that you represent any of those individual claimants in the MDL action.

MR. ROSELL: That's correct, Your Honor, but the question is really are they a party in interest to be heard today with respect to the disclosure statement. That is all this is. We are not here objecting to, like in Mallinckrodt, plan confirmation. We are here on a disclosure statement hearing asking and advocating for clarity in the disclosure statement for the many. At the end of the day our class consists of all FTX customers which no one here in this room is speaking for any longer.

THE COURT: How is it any different that this is a disclosure statement as opposed to confirmation. You still have to have standing.

MR. ROSELL: Well, the question is whether or not,

under Truck Insurance, we are a party in interest and the Supreme Court has recently said that courts should interpret that very broadly. The question is whether or not the hearing or the disclosure statement potentially affects us. Now, we can play games --

THE COURT: Potentially affects the law firm because they're the only party in front of me right now is the law firm. It doesn't affect the law firm.

MR. ROSELL: And that's fine, Your Honor, because the debtors have conceded and acknowledged that there is $400 million at stake for the law firms and the debtors plan --

THE COURT: But that is not money coming from this estate.

MR. ROSELL: I think that is exactly what they are arguing, right. They are arguing that, and they have submitted the forfeiture proceedings, competing forfeiture proceedings in the criminal court before Judge Kaplan, saying that the forfeiture property is property of the estate. We have done the same thing and said, no, its property of the customers and should go directly to the customers. Their plan creates a remission fund that's going to be funded by those proceeds. Those proceeds would otherwise go through the MDL and be part of the fees that counsel would potentially calculate.

I hear laughter over here about, well, you know,

they're going to make a big deal that it's a money grab somehow. It's a little bit like the pot calling the kettle black, isn't it. I mean we have got $400 million at stake potentially. They like to throw that around; oh, counsel, this is just a money grab. Nothing has been set in stone.

We have to go through process all these cases, the class actions, then at the very end of the day submit a request for fees. The District Court Judge, Judge Moore, will decide what our fees are. This is coming from someone -- from a group that --

THE COURT: That's outside the bankruptcy. That is not -- that has nothing to do with the bankruptcy.

MR. ROSELL: But that bankruptcy plan specifically addresses and seeks to have those funds put into the bankruptcy and distributed. That --

THE COURT: Well, that is a separate fight. You have a fight over whether or not the funds being held in the Southern District of New York are going to be transferred to the MDL action or are going to be transferred to the debtors. Either way, they're going to go to the creditors except for the attorneys fees. They go to either party. But I am still struggling with how that has any impact on this estate. How that creates an interest in the estate on behalf of the MDL plaintiffs' counsel. Their attorney's fees -- they wouldn't have individual standing to argue about the disclosure

statement.

MR. ROSELL: If counsel was no longer counsel for the estate and they were a creditor.

THE COURT: Then they would be owed money by the estate. You are not owed money by the estate.

MR. ROSELL: Well, the question is not whether we have an interest. The question that the Supreme Court has espoused is does what is before the Court potentially concern, potential concern or effect, the party who is asserting standing.

THE COURT: Well then you have got to tell me who the party is that has the standing, it's not the law firm. So, if it's the individual claimants in the MDL action then you have got two problems with that. One, you haven't disclosed it under 2019, which is required, and, two, you only have a putative class. You don't have an actual class that has been certified by the Court yet.

MR. ROSELL: Your Honor, if the Court wants to interpret our objection as an objection based on the named plaintiffs, then that is certainly fine as well. This --

THE COURT: I don't. I'm just telling you that if that's position you are taking you have a problem.

MR. ROSELL: Well, Rule 2019 there is an exception there. The Rule 2019(b)(2) --

THE COURT: For class actions, correct, but there

is no class action yet. You only have a putative class action that hasn't been approved.

MR. ROSELL: Well, there are fiduciary duties though and I believe in, I think it was Mallinckrodt, Your Honor I don’t think got into the fiduciary duties owed. Under Florida law the MDL counsel owe a fiduciary duty to a pre-certified putative class. The only reason why its not certified right now is because the debtors are attempting to block the certification. There is -- there are several pending settlement motions with Judge Moore right now that once they go out and get noticed its going to certify the preliminary certified class on those issues. Its just a matter of timing.

THE COURT: But the timing is what matters. It's not certified yet.

MR. ROSELL: Your Honor, we had the Supreme Court decision in Truck espousing that it should be read broadly. That if it potentially affects the concerns of a party, they should have a right to be heard under 1109(b) of the Bankruptcy Code. If the fees of MDL counsel aren't sufficient and the fact that the plan provides an anti-dip provision that essentially coerces the creditors voting into giving up the MDL because, otherwise, the debtors are going to withhold their distributions sending that 60 days window -- you know, the 60 day promised window for recovery out the window, how

do we not have standing to be heard today to be able to advocate for the millions of customers that have no one else left with the.

They have cut deals with the ad hoc group. Well, the ad hoc group, yes, in the very beginning had about $800 million of retail. The ad hoc group now holds $4 billion made of claims traders. Claims traders have been buying claims throughout the bankruptcy on the eve of the disclosure statement being revised with new receivers. There is nobody left. The committee is conflicted. They're hardly heard of in this case.

THE COURT: Well, that is a serious allegation, sir, very serious allegation and you better have some evidence to back it up.

MR. ROSELL: Sorry, Your Honor, I'm talking with respect, of course, to just the FTX customers who is speaking on behalf of just the FTX customers right now. We are asking for the opportunity today, Your Honor, to be heard and to advocate for them and to protect their rights in the MDL. We have tried to stay clear of this bankruptcy court, Your Honor. We have been focused on the MDL, but the debtors have appeared in the MDL. The debtors have even initiated adversary proceedings in this Court asking to stay against the named plaintiffs who we represent. We should have an opportunity to be heard, Your Honor.

THE COURT: All right. Well, I -- my view is you do not have standing. This is a law firm that is appearing before me, its not the underlying individual claimants. Your papers even say you don't have any claims against the estate. You are claiming against third parties. You are trying to recover against these third parties. You named them in your motion paper who you are going after. That is not part of this estate. Those are separate issues.

Now there may be some tension between whether or not those causes of action are property of the estate or property of the individuals, that issue is not before me on this disclosure statement. So, if you are going to appear here on behalf of creditors you have to have a creditor. You don't have a creditor. You have a law firm who is not a creditor of this estate and, therefore, they do not have standing to press any objections on the disclosure statement.

MR. ROSELL: Thank you, Your Honor.

THE COURT: Thank you.

Whenever you are ready, Mr. Glueckstein.

MR. GLUECKSTEIN: Thank you very much, Your Honor.

Our other remaining disclosure objection that was filed is the objection that was filed on behalf of Mr. Kavuri and three other creditors by McCarter & English. As detailed in our reply this group of creditors, led by Mr. Kavuri, have been acting in concert and representing that they are

speaking on behalf of numerous other creditors through social media and through an unsanctioned website, FTXVote.com, that has been improperly soliciting no votes on the plan prior to approval of any disclosure statement by this Court.

The Kavuri voting website solicits votes against the plan with a lockup mechanism in which creditors purport to provide the Kavuri parties a voting proxy. These purported 1,700 no votes are being locked up without these small claimants having the information necessary to evaluate the plan and what they are actually going to receive pursuant to it or whether the current plan is better or worse than any perceived alternative.

The solicitation of votes prior to approval of the disclosure statement is plainly impermissible under Section 1125(b) of the Bankruptcy Code. The debtors reserve all rights and remedies, including to enjoin and vacate this activity, and to designate the votes of all participants in this activity.

After we demanded compliance with Bankruptcy Rule 2019, McCarter & English finally filed a Rule 2019 disclosure late yesterday afternoon. That disclosure is illuminate and confirms what the debtors suspected. The Kavuri group actually represents none of the purported customers they misleadingly claim to represent online. In fact, the Rule 2019 disclosure reveals that the Kavuri group has now shrunk

to there members down from before who actually filed the objection.

The misinformed activity of these three purported creditors is unfortunate but needs to be accurately put into context. This is three customers trying to allocate more value to themselves at the expense of every other stakeholder of these debtors, nothing more. If these three customers want to object to the customer property settlement and assert property rights or object to the plan on any other legitimate basis, their rights are preserved to do so at the appropriate time. As to their actual disclosure issues raised in the objection, the debtors do not believe there are any further changes that need to be made in response to the Kavuri parties objection, but I reserve the right to respond to any actual disclosure issues that are raised today by counsel.

With that, I will turn it over to counsel for Mr. Kavuri.

THE COURT: All right.

MR. ADLER: Good morning, Your Honor. David Adler from McCarter & English on behalf of Sunil Kavuri, Ahmed Abd El-Razek, and Pat Rabbitte.

We did file a 2019 statement yesterday and I want to make it perfectly clear to the Court that from McCarter & English's perspective at the present moment we only represent three creditors. I did put in the 2019 statement that we had

been contacted, we received a list of 1,700 people, we have not been retained yet. I want to lay that out first thing. We represent three creditors, three direct creditors. Those were the creditors who filed the adversary proceeding and that is who we are here for today. We are not here on behalf of anyone else.

THE COURT: Has Mr. Kavuri been soliciting proxies for the --

MR. ADLER: Not to my knowledge, Your Honor, but I have to say that I do not know exactly what he is doing exactly and I take issue with what Mr. Glueckstein said about a lockup because I have heard nothing about that.

THE COURT: Well, what are the 1,700 additional potential customers.

MR. ADLER: My understanding, Your Honor, is that there is a group of original FTX customers, people who have not sold their claims, and Mr. Kavuri has sought to try and get them into a group so that these issues that are particular to the original holders can be brought in some coordinated fashion before this Court.

THE COURT: Well, he has been soliciting, maybe not proxies, customers.

MR. ADLER: I don’t know if he's been soliciting. I don’t know the answer to that, Your Honor. I don’t know exactly what he has done. I know that I have received a list.

I don’t know how I got that list, but we do not represent them today. I do represent the three other individuals and I am here to make the disclosure statement objection on their behalf.

THE COURT: Okay.

MR. ADLER: I do believe that, first off, Your Honor, the disclosure statement is woefully inadequate in describing what the basis for these releases and exculpation provisions are. Everyone in the world is getting a release under this plan. There is no disclosure about why these releases are necessary. There is no disclosure of what potential value that those releases have and it is -- I understand, Your Honor, that a lot of plan objections -- well, a lot of objections to disclosure statements that go to the merits of the plan are deferred, but I think we're in a particularly unique period here and I say that, you know, expecting to have come down here today having seen the Purdue decision and I don’t know what Purdue is going to say about these types of releases, if anything.

I do think that there is a serious questions here about on a plan related issue sending a ballot out to someone and, you know, requiring them to respond in order to opt-out. The way that I read the cases, Your Honor, is that mere silence does not equate to an acceptance when there is no duty to respond.

THE COURT: I have ruled otherwise.

MR. ADLER: Say again.

THE COURT: I have ruled otherwise in Mallinckrodt.

MR. ADLER: You are, obviously, not the first, Your Honor, but I think in this case there are particularly larger circumstances because we're all over the world. I don't know anything about how this information is being conveyed in Thailand, in China, and every other place in the world about how -- you know, what the consequences are for not returning a form. To me it seems to be non-consensual when there is no duty to speak, but I will leave it at that because I believe that, well, perhaps the Supreme Court will address that issue this week, Monday, whenever they release Purdue.

THE COURT: Well, it will definitely be out before the confirmation hearing. So, and this is really a confirmation hearing issue.

MR. ADLER: That is true, Your Honor. I would -- I mean, if they say something that is clear that this type of duty to respond is not permissible it would be an awful waste of money and time to sort have gone through the disclosure statement. I think maybe --

THE COURT: You might not get that in this case though because I think Purdue is non-consensual third-party

releases, not consensual.

MR. ADLER: Correct. That is absolutely correct. And the question before the Supreme Court is whether non-consensual releases are permissible and I'm not sure that they are going to go into what is consent versus non-consent. We are all sitting here waiting to see what they say about that issue, but you are correct, Your Honor, they may just say non-consensual releases are impermissible and then it's for us to figure out whether these releases are non-consensual or not.

I do believe though that it may be wise to not commence the solicitation process. I'm not even sure it could begin prior to the issuance of that decision because we just don’t know what they are going to say. I don’t think that is going to impact anything because its going to be out, I'm guessing, in the next five to seven days. That was one point that we raised and I understand, Your Honor, that it’s a plan objection, but I do see it as a disclosure statement issue here to the extent that any information is coming at us that could potentially suggest that this type of release is not permissible.

I do think there should be disclosure and why exculpated parties need releases as well. I mean, I am used to see exculpation provisions. I am not used to seeing exculpation provisions and then the exculpated party is also

getting a release. I don't know why that is required here and I think it's something that requires more disclosure.

Separately, Your Honor, I do think -- we did raise a number of straight disclosure issues about certain items that had to be addressed in the disclosure statement, I think particularly the IRS settlement. I think that the debtors addressed that. We did raise that there should be more disclosure on tax related issues.

In the crypto cases that I've been involved with there's generally a strong desire that the customers receive the crypto back in kind because if they don't get it back in kind it's a disposition event or people believe that it may be a disposition event under US tax law. So, you know, when we're looking at issues here this sort of goes to best interest. If there were a trustee who was prepared to distribute in kind versus a debtor that is not willing to distribute in kind that might make a big difference in this case to some people who may have a huge tax bill if they're getting cash rather than in kind.

THE COURT: I think Mr. Dietderich explained that situation that the debtors could do that in this case because the exchanges didn't have the crypto, it was gone.

MR. ADLER: Correct, Your Honor. I mean they are sitting with cash but there are other crypto cases out there, I believe BlockFi may be one, where they're sitting with cash

too and on the way out the door its going through a third party and being converted into crypto at the prevailing rate so that the distribution the customer receives is actually crypto in kind rather then cash.

So, in other words, if you had 10 bitcoin on the platform, and you're getting a recovery, let's say, $80,000 or whatever, on the way out the door it may pass through Coinbase or PayPal or some other third party so that the customer actually receives bitcoin back rather then cash. I don't really understand what the logical issues are why that can't be done here, but it would save people who have potential tax bills enormous sums of money, okay, to get distribution in kind rather then in cash.

THE COURT: Well, again, that sounds like a confirmation issue.

MR. ADLER: I'll throw another one on, Your Honor, 1141(d)(3). This debtor is liquidating. 1141(d)(3) says the liquidating debtor is not entitled to a discharge.

Here, the debtor is getting a discharge and in addition to the discharge, everyone else is getting a release and exculpated, but, you know, it all flows from that, you know, if the debtor is not entitled to a discharge, why is everyone else getting releases and exculpation provisions? I know that's a confirmation issue, Your Honor, but I thought I'd highlight it.

I do think that there should be further disclosure. I listened to the debtors' counsel about the customer property issue. I don't think they really go through in much detail, and I certainly don't see anything in there that talking about the terms and conditions of what the agreements were between the customers and FTX regarding the property at the time it was deposited. I know the debtors probably don't want to say that, but, you know, for purposes of disclosure, it probably should be said that various parties take the position that the property that the debtor is holding on to is customer property. You know, they can disagree with it if they want or they can say whatever they want about it, but I do think there should be some statement in there that explicitly references the terms and conditions of the agreement between the customers and FTX.

We had some other related issues, with respect to the timing on the solicitation. I think that we have to object. The creditors have to object to any plan supplement one week prior to the voting deadline.

Your Honor, it's been my experience that a lot of these plan supplements come trickling in and I would suggest that the language be revised that the creditors are given at least one week to object to any plan supplement that gets filed. That's more of a solicitation issue, but I did want to highlight that for the Court.

I think we raised some issues about the liquidation analysis being inconsistent and what we said was in Appendix C, it's unclear why there are more assets available in a Chapter 7 than in a Chapter 11. I don't know, frankly, if that issue has been addressed or not in the latest iteration that was filed, but we did flag that for the Court.

We also thought there should be more disclosure on the pending adversary proceedings that have been filed in the court, specifically, the Kavuri action, the MDL action, as well, and any other litigation or any other adversary proceeding that's been filed since the case was commenced.

With those -- and I do want to point out a couple other things. We did file a joinder to the MDL objection this morning. So we join in those objections and I think from my perspective as a bankruptcy lawyer -- and I'm not involved at all in the MDL proceeding -- you know, we think that the customers, obviously, should have, you know, a choice of or not be precluded from recovery in the MDL proceeding if they're, you know, if they're participating in this matter. I do recognize, Your Honor, that that's a confirmation issue, as well, so I'm going to leave it at that for the time being, but I just want to note it for the record.

I think that's pretty much it, Your Honor, in

terms of what I wanted to -- I think, obviously, any supplemental reports adduced by the examiner should be -- there should be a mechanism for disclosure of that to the creditor base. I don't know when, exactly, that report is coming out, but --

THE COURT: It's already out, right?

MR. ADLER: The supplemental?

THE COURT: Oh the supplemental one? I didn't hear you say supplemental.

MR. ADLER: Okay. I was talking about the supplemental report and how that gets transmitted, if it comes out during the solicitation process and, you know, it could be, I guess, another mass solicitation. I imagine that the solicitation is going to be a fortune, to put it mildly, and I don't know if it makes better economies of scales -- I don't know what the timetable is for that, if there is a timetable, but, obviously, to the extent it comes out during the solicitation, it should be conveyed to all creditors.

THE COURT: Well, it would be put on the docket, for sure.

MR. ADLER: I do just want to finish with the point about taxes, because I do think that this is a big issue for a lot of original customers. There are situations that I've seen -- not in this case, but in other cases -- where creditors were offered cash and that cash would be

basically a disposition of the original crypto position. And some examples that I've seen result in the creditor not only having to give up all the distribution to the tax authorities, but to pay even more than the distribution, depending on how it gets configured.

So I do think that in terms of looking out for the customers' best interests, that the distribution in kind seems to me to be something that's easily solved. You know, I doesn't even have to be through FTX; it could be from a third party going on when it's going out the door. But, you know, creditors have been waiting nearly two years and it's -- I think it should be relatively easy to solve this problem and I think it would generate more support among creditors if they're getting a distribution. And instead of having to pay a capital gains tax on it, they're able to look to the loss, you know, of their property when it resided at FTX, which does remind me that there should be more disclosure in the disclosure statement about customers, whether the customer -- whether it is the debtors' position that the customers, the distribution could be characterized as a theft loss or another type of loss. There's no discussion in the disclosure statement about that.

Now, I realize that that is often times an individual tax decision, but in this case, you know, the debtor surely formed an opinion about whether this amounts to

a theft loss or not.

THE COURT: Well, can the debtors make that decision on behalf of an individual?

MR. ADLER: They don't have to make it on behalf of all of them. They can say, "It's our view."

THE COURT: I don't know how much weight that would carry, but, all right.

MR. ADLER: All right. Your Honor --

THE COURT: Thank you.

MR. ADLER: -- thank you.

MR. GLUECKSTEIN: Your Honor, Brian Glueckstein, again, for the record. Just very briefly on a couple of these points. I'm not going to go through the laundry list of points, most of which Mr. Adler acknowledged are confirmation issues. But just on a couple of points so the record is clear, Your Honor asked a question with respect to Mr. Kavuri's activity online with respect to solicitation and lockup. Mr. Adler claims not to have knowledge of it.

But we did submit, in connection with our reply papers, information about the website, including under a declaration from Ms. Kranzley, an excerpt of the cover homepage of the website on which Mr. Adler's firm is listed as counsel. And it walks through what is happening here, with respect to the solicitation of votes.

So the debtors will address this issue. We'll

make a motion, Your Honor, to deal with this -- obviously, it's not before Your Honor today -- but the suggestion that somehow these three creditors are acting independently of what's happening and what Mr. Kavuri is doing online is -- we do not believe is credible.

The -- to be clear, on his question and the argument about releases, there is nothing in the releases that are proposed in this plan, which, of course, is a plan confirmation issue, it is a classic plan confirmation issue -- it comes up in almost every case -- there's nothing about these releases that is a nonconsensual release that is going to turn on the decision that is pending before the Supreme Court in Purdue.

The releases are limited to activities with respect to these cases. We're not giving prepetition conduct releases for prepetition conduct of the debtors or seeking them. And we did, importantly, make a change in the round of comments that were -- and changes that were filed with the Court most recently after consultation with our stakeholders and the United States Trustee's Office to make clear that the non-voting classes are opt-in releases only. So there is no nonconsensual release component to the releases that are proposed, so I don't want that to be misconstrued coming out of the hearing today.

We've addressed, and Mr. Dietderich has addressed,

we've addressed at length, the issues around inability from day one of these cases, to provide in-kind distributions of digital assets to customers. That issue has been discussed. The entirety of the case has revolved around the idea and the reality is that the debtors here need to monetize -- recover, monetize assets and make distributions to creditors in non-digital asset currency.

THE COURT: Should there be a disclosure about the tax issue?

MR. GLUECKSTEIN: On the tax issue, Your Honor, so let me address that. On the tax issue, there's been significant revisions, as Your Honor will see in the redline to the tax disclosure in Section 8 of the disclosure statement. That disclosure was vetted extensively with the Official Committee, with the Ad Hoc Committee, with our tax advisors to expand, significantly, the disclosures around tax.

I would submit, Your Honor, this idea that the debtor should take a position, which it sounds like, effectively, give tax advice into the disclosure statement on some type of worldwide basis, we don't think would be appropriate. But we do think the expanded tax disclosure addresses a number of the points and we think is more than sufficient for purposes of the disclosure statement on the (indiscernible).

Similarly, on the issues of customer property, again, there's extensive disclosure. Mr. Kavuri's adversary proceeding is disclosed in the disclosure statement. The idea that there are arguments that have been asserted and are being asserted is not new and the settlement of the customer property issues with those whom -- with whom we are proposing to settle and those being put forth to voting creditors to the plan is extensively discussed in the disclosure statement.

With respect to the plan supplement, Your Honor, this is important, and we agree that there needs to be sufficient time for creditors, prior to the voting deadline, to review the information that's in the plan supplement and we have revised the materials to make clear that we will be filing that plan supplement two weeks prior to the objection deadline. So I think Mr. Adler was asking the creditors should have a week to review. They're actually going to have two, at a minimum, to review information in the plan supplement.

And, finally, Your Honor, with respect to the examiner report, we added disclosure in the most recent round of changes, with respect to the examiner's report that was filed and the disclosure statement makes clear that there is the potential for a supplemental report to be issued. As Your Honor knows, that report will be on the docket of the

Court. We do not think there would be a need to serve out that report to creditors in the way that was just suggested.

But, certainly, the creditors, in reviewing the disclosure statement, will be made aware of the fact, not only of the examiner's report and his findings, but the possibility of a supplemental report to be issued in the future. And we don't believe there's anything in that report, Your Honor, that would -- the scope of that report that's been requested by Mr. Cleary that would do anything to change the plan or the issues before the Court or before the creditors on a voting basis.

THE COURT: While I'm thinking of it, this is off the objections, where does that stand? Has the U.S. Trustee -- is the U.S. Trustee here?

MR. GLUECKSTEIN: Right there, Your Honor.

THE COURT: Have you -- what are we doing with the proposed supplemental investigation by the examiner?

MR. GLUECKSTEIN: So, Your Honor, I'm happy to address it, but I'll let Ms. Richenderfer.

MS. RICHENDERFER: Your Honor, just to be clear, the United States Trustee is in agreement with the request and so you're not going to be hearing from us individually about it and I believe it's listed for an upcoming here.

THE COURT: Okay. I just want to make sure it's on somebody's radar that it's going to be on --

MS. RICHENDERFER: Oh, yes, Your Honor. It's moving forward. It was filed by counsel for the examiner himself. We have already reviewed it. I believe other parties that are sitting here in front of you, parties in interest, have also reviewed it and I don't believe that I've seen any objections to it yet.

THE COURT: Okay.

MR. GLUECKSTEIN: And, Your Honor, that's correct. The examiner did file a motion to authorize the scope and the budget and timing of that supplemental piece. The objection deadline on that was actually, I believe, was yesterday, and so our understanding is that a CNO is going to be submitted later today to Your Honor for the Court's review.

THE COURT: Okay.

MR. GLUECKSTEIN: But the debtor also had no objection to what was requested.

THE COURT: All right. And as long as we're talking about plan supplements, I will apologize to all the parties about the time it has taken me to get to the opinion on the estimation of certain cryptocurrencies that were presented to the Court back in March, I think it was. But I will be issuing an opinion on that this week, so that will come out this week. There was a lot of stuff there to go through.

(Laughter)

MR. GLUECKSTEIN: Thank you, Your Honor.

I do believe that does takes us, and is very helpful, Your Honor. We have two other objections, with respect to --

THE COURT: Well, I can probably rule on this. Let me see if there's any response. Mr. Adler, did you want --

MR. GLUECKSTEIN: Oh, I'm sorry.

THE COURT: -- did you want a chance to respond?

MR. ADLER: David Adler from McCarter & English.

Your Honor, just with respect to the comments about the solicitation, I'll say it again. I don't know anything about it, okay. I literally don't know anything about it. But it will be dealt with and I forgot to note that we have been asked by the people that we do represent to file a motion to certify a class within the bankruptcy and I expect that we will do so in some short period of time.

THE COURT: Certify a class in what?

MR. ADLER: Of original customers in this case.

THE COURT: Certify it for what purpose? There's no adversary proceeding.

MR. ADLER: For confirmation purposes.

THE COURT: You've got to have an adversary to certify a class.

MR. ADLER: Well, we have a pending adversary.

THE COURT: Okay.

MR. ADLER: That's number one.

Number two, I did forget to mention that we noted that there should be more disclosure on Binance in terms of causes of action. With that, Your Honor, I don't have anything else further, unless you had some questions for me?

THE COURT: Mr. Glueckstein, what about the Binance disclosure?

MR. GLUECKSTEIN: Your Honor, Binance is one of many potential targets of litigation in this case. We don't believe we have disclosure obligation, nor would it be prudent to disclose, you know, all potential causes of action that the debtor might be investigating or pursuing.

We have an extensive discussion and disclosure statement with respect to the litigation claims that are pending and, of course, as we note there, and as we made clear on the record, the debtor continues to investigate other claims. We don't believe there's any specific disclosure with respect to Binance that is necessary, but what, you know, what's discussed, with respect to litigation claims, generally.

THE COURT: Okay. Thank you.

On these objections, I'll overrule the objections and, obviously, Mr. Adler, your rights are reserved to raise any or all of these issues at the final confirmation. I

think almost all of these were confirmation-type issues. The ones that weren't, it seems the debtor has addressed those and updated the disclosure statement to address those concerns. So I will overrule the objection.

MR. GLUECKSTEIN: All right. Thank you, Your Honor.

I believe, and I'm sure folks in the courtroom will correct me if I'm wrong, but my understanding is that's the scope of the disclosure objections that we have that were still outstanding that the Court has now addressed. There are portions, at least coming into this hearing, of two other objections that we understood parties were intending to pursue before Your Honor. The first of which, I think Your Honor just addressed by informing the parties to expect in the near term, a decision on the further estimation proceeding on the MAPS and OXY tokens. There was an objection that is unresolved from Maps Vault, who is one such party. We worked with counsel to resolve their disclosure objections.

There is a dispute between the parties as to how their claim will be treated for voting purposes in the event that the Court had not ruled by the voting deadline. I think that issue, based on Your Honor's announcement a few moments ago is moot, but I will turn it over to Mr. O'Donnell to see if he still has issues he would like to address.

THE COURT: All right. Thank you.

Mr. O'Donnell?

MR. O'DONNELL: Your Honor, Dennis O'Donnell of DLA Piper, on behalf of MAPS and OXY Vault, here, with respect to the limited objection we raised, which may well have been fully resolved by your indication that a decision will be issued this week.

Our concern, as Mr. Glueckstein said, was not with we understand that whatever your decision says will control our voting amount for purposes of, you know, voting on the plan. The concern was what if we didn't have a decision. I think if that decision, in fact, issues this week, the problem is resolved and the rest of our objection can go away with a reservation of rights. Clearly, if there are some complications we can't foresee at this point, we would retain the right to come before the Court presumably on a 3018.

You know I have some issues with whether it would apply. There is no pending objection, but to the extent we needed to come back to the Court in some shape or form after that decision issued as to voting rights, we can do it then. But I think given what you've told us, for the moment, we can stand-down.

THE COURT: Okay. Thank you.

MR. GLUECKSTEIN: Thank you, Your Honor.

And the debtors would just reserve rights on that issue. It sounds like we're not going to need to address it.

The last pending objection, as we understand it, that's still pending this morning is the objection that was filed by the LayerZero parties. And with respect to the LayerZero, the debtors have agreed to make certain changes to the disclosure statement and corresponding changes to the plan to provide some further clarifying language that, one, claims arising under Section 502(h) of the Bankruptcy Code are not being discharged on the effective date and, two, that the disputed claims reserve, which is contemplated in the plan, will, in fact, be established.

Specifically, in addition to the changes that were, certain of these changes were reflected in the redlines that were filed with the Court over the weekend, we will be adding the "avoidance of doubt" language that appears in the disclosure statement into plan Sections 4.4 and 10.2 and tweaking the language of Section 8.5 of the plan itself, consistent with the disclosure to provide some further clarification. With those changes, our understanding is that LayerZero's disclosure statement objections are resolved. We, nonetheless, understand them to be pursuing some form of a patently unconfirmable objection this morning and I'll turn it over to them.

THE COURT: Okay. Just the -- I did receive a

redline this morning. These changes are not included in that redline?

MR. GLUECKSTEIN: No, we will update these changes and if there was anything that came out of the hearing today, and file one further redline after the hearing today.

THE COURT: Okay. Thank you.

MR. MCNEILL: Good morning, Your Honor. Steve McNeill from Potter Anderson & Corroon, here on behalf of the LayerZero Group. I wanted to introduce Your Honor to Dylan Marker from Proskauer Rose, my co-counsel, who will be addressing this matter. He is admitted *pro hac*.

THE COURT: Okay. Thank you.

MS. MARKER: Your Honor, may I please the Court? Dylan Marker of Proskauer Rose, on behalf of LayerZero Labs Ltd., Ari Litan, and Skip & Goose LLC, whom I will refer to as the "LayerZero Group."

Before I begin, I want to acknowledge that we were able to resolve our disclosure-related objections consensually with the debtors with the representations that the debtors just made on the record; however, the disclosure statement should not be approved today because the Court is being asked to approve a disclosure statement for a plan that is drafted as patently unconfirmable.

As the Third Circuit found in, In re American Capital Equipment LLC, at 688 F.3d 145:

"If it is obvious that a plan described in the disclosure statement is patently unconfirmable, the Bankruptcy Court can address the issue of plan confirmation and deny approval of the disclosure statement."

The plan cannot be confirmed under Sections 1129(a)(1) and (a)(3), which requires that the plans comply with the applicable provisions of the Bankruptcy Code and be proposed in good faith. The requirements of Sections 1129(a)(1) and (a)(3) cannot be satisfied here because the plan violates Section 1123(a)(4) of the Bankruptcy Code and is not being proposed in good faith.

The plan violates Section 1123(a)(4) by treating the LayerZero Group's claims in Classes 5(a) and 5(b) worse than almost every other creditor in Classes 5(a) and 5(b), without any member of the LayerZero Group's consent. Equal treatment is one of the bedrock, equitable principles that Section 1123(a)(4) protects.

If you'll indulge me, Your Honor, we think it would be helpful to provide some background on the claims in the adversary proceeding and how those claims are being treated to make clear to the Court how this plan harms our clients and other similarly situated creditors. The LayerZero Group consists of LayerZero Labs, a Web3 startup focused on interoperability solutions between different block chains; Ari Litan, one of LayerZero's former COO; and Skip &

Goose LLC, an investment vehicle controlled by Ari Litan.

Prepetition, Alameda was an investor in LayerZero and LayerZero was one of Alameda's funded debt creditors. LayerZero also used exchange accounts on FTX.com to store crypto tokens needed for its business. Ari Litan and Skip & Goose used FTX U.S. Exchange accounts just like all of the debtors' other customers to invest in cryptocurrencies.

The debtors have brought an adversary proceeding against the LayerZero Group consisting of causes of action in two different buckets. The first bucket seeks to undo transactions between LayerZero Labs and Alameda, related to an exchange of $45 million in debt claims that LayerZero held against Alameda for equity, interest, and warrants that Alameda held against LayerZero.

The first bucket only has causes of action against LayerZero Labs. Note that this bucket involves the debtors and the Alameda silo, and the relationship between LayerZero and Alameda.

The second bucket seeks to avoid, as preferential transfers, withdrawals from FTX.com and FTX U.S. Exchange accounts by each member of the LayerZero Group that occurred 90 days before the petition date. This second bucket of causes of action are the same customer preference claims the debtors are waiving under Section 5.5 of the plan. If a customer in Classes 5(a) and 5(b) votes to accept the plan

and agrees to the amount of their claim.

What the debtors appear to be doing is to designate preference claims in bucket 2 and exclude a preference action solely because of the cause of action against LayerZero Labs in bucket 1. Even though these are unrelated causes of action there unrelated debtors. This treatment violates Section 1123(a)(4) of the Bankruptcy Code.

Section 1123(a)(4) provides that a plan shall provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest.

It is uncontroverted that "equal treatment" means that all members of the class must receive equal value and pay the same consideration for their distributions. The Court in W.R. Grace, 475 B.R. 34, has also noted that equal treatment means that all class members are subject to the same process for claim satisfaction and that all claims in a class must receive equal value through the same pro rata distributions or payment procedures to all claims.

Where the debtors have deviated from this requirement is by offering to waive valuable preference causes of action in exchange for a vote to accept the plan for virtually all customers, but a select few. In looking at this issue, the Court must look at the value the customers

are receiving from a preference waiver, which cannot be separated from the distributions that Class 5(a) and 5(b) creditors will receive. These preference waivers are extremely valuable to Class 5(a) and 5(b) creditors because these are the classes of creditors, who, as the debtors have described in their disclosure statement, attempted to withdraw billions of dollars of assets from their deposit account on the eve of the Chapter 11 filing.

While the debtors have not disclosed exactly how much money was withdrawn shortly before the petition date, we understand from public reportings that roughly $6 billion was withdrawn in November 2022. Either way, the value of these preference waivers are being denied to the LayerZero Group, but billions of dollars of value is being provided to similarly situated creditors in the same class.

As an example, Bitcoin is currently trading at approximately $70,000 per Bitcoin, but the debtors are estimating one Bitcoin at approximately $17,000. Any creditor who withdrew one Bitcoin in the preference period is, thus, receiving approximately $53,000 in value. Creditors that sold their Bitcoin around $17,000 per coin risk potentially losing $53,000 if the debtors were successful in all of their arguments and forced the customer to purchase a new Bitcoin in the open market for the debtors.

The debtors attempt to obfuscate the issue by

arguing that the preference waiver is separate from treatment on behalf of a customer entitled to a claim. It is not. The waiver is being offered in exchange for a vote to accept the plan and only to customers in Classes 5(a) and 5(b). It is, by definition, being offered on account of a creditor's claim in exchange for a vote to accept the plan; an opportunity that is being denied to the LayerZero Group for treatment of its claims.

The debtors say that all holders of dot com customer entitlement claims and U.S. entitlement claims will receive the same kind of treatment, but then also say that some of these holders are deemed to be excluded customer preference actions, which completely cuts against the argument that all holders of dot com customer entitlement claims and U.S. customer entitlement claims are being treated the same.

The debtors cite, In re Breitburn Energy, 582 B.R. 321, which notes that as long as all creditors had the same opportunity to participate in the rights offering, equal treatment was not violated.

Here, the debtors are specifically excluding the LayerZero Group from an opportunity to participate in the preference waiver. While the LayerZero Group can choose not to participate in the preference waiver, just like creditors can choose not to participate in a rights offering, the

opportunity is being denied to them and not similarly situated creditors in their class.

We agree with the debtors that 1123(a)(4) requires equal treatment, not equal outcome. When you *carte blanche* denied opportunity to participate in a settlement because of litigation relating to unrelated claims against three creditors, this is relation to treatment and not outcome. The LayerZero Group is being denied an opportunity to receive value on account of its claims that virtually every other creditor in Classes 5(a) and 5(b) receives.

Because the plan provides these valuable preference waivers to almost all creditors except the LayerZero Group, the plan violates equal treatment. Although the disclosure statement does not say who is entitled to participate in the preference waiver and notes that a plan supplement will detail all of the excluded customer preference actions, the only other active litigation we find where customers are being excluded are preferences against former employees and insiders or customers who allegedly jumped the queue and received manual withdrawals ahead of other customers.

The debtors have not brought any similar allegations of wrongdoing against any member of the LayerZero Group. While 1123(a)(4) is the problematic Code provision that the debtors are violating in their plan, we also want to

highlight that the plan also violates Section 502(d). Section 2.1.8(d) of the plan provides that a plan will not be allowed if it is subject to risk of disallowance under Section 502(d), even if a creditor has otherwise filed a valid and timely proof of claim and will, therefore, not receive a distribution. The claim will be deemed a disputed claim and not receive a distribution under Section 8.8 of the plan.

Unfortunately, this flies in the face of applicable Delaware case law. Judge Walrath, in, In re Lids, 260 B.R. 680, held that a debtor could not avail itself to the benefits of Section 502(d) without a judicial determination against a creditor. Judge Walrath said, and I quote:

"To disallow a claim under Section 502(d) requires a judicial determination that the claimant is liable, therefore a debtor wishing to avail itself of the benefits of Section 502(d) must first obtain a judicial determination on the preference complaint."

Here, the debtor has merely commenced an adversary proceeding. That is not enough to determine that a creditor is liable. The debtors cannot hold up distributions to members of the LayerZero Group or other customers on claims that should have been allowed merely because of an adversary proceeding, where there's not been a judicial determination.

Lastly, the disclosure statement should not be approved because the plan was not proposed in good faith in violation of Section 1129(a)(3). Treatment for Classes 5(a) and 5(b) depends on whether the debtors have unrelated causes of action against the customer. While not defined, the plan provides a variety of factors of whether a customer is the subject to an excluded preference action. These include where a customer was an employee, insider, acknowledged of the commingling and misuse of corporate and customer funds or changed its "know-your-customer" information to facilitate withdrawals or received manual information for withdrawals, where said withdrawals were otherwise halted.

It also provides, and this is more relevant to the LayerZero Group's claims, where any debtor has a cause of action or a defense against the recipient of the applicable preferential payment or transfer or a subsequent transferee of the applicable customer entitlement claim or any of its affiliates, other than a claim arising under a customer preference action. While not drafted particularly clearly, this appears to mean that the debtors can exclude any customer from receiving equal treatment on its deposit account claims because of an unrelated cause of action by or against unrelated debtors.

This exclusion for unrelated causes of action means that creditors like Mr. Litan and Skip & Goose, who the

debtors have only brought causes of action relating to customer preference claims are being excluded from participating in the same distributions as all other similarly situated creditors because of the bucket 1 causes of action against LayerZero, an entity where Mr. Litan only has an equity interest.

LayerZero is also being excluded from receiving a distribution on its customer entitlement claims for unrelated causes of action against an unrelated debtor, i.e., causes of action by Alameda against LayerZero. The only basis for this treatment is leverage in the adversary proceeding and to force a settlement, rather than a legitimate good faith bankruptcy purpose. If the debtors had a good faith bankruptcy purpose, they would seek to give the LayerZero Group equal treatment with other creditors in Classes 5(a) and 5(b).

For all the reasons stated, the disclosure statement should not be approved because the plan is patently unconfirmable and the relief requested by the debtors should denied.

Does Your Honor have any questions?

THE COURT: No questions, but there was a lot of facts in there for which I have no evidence.

Let me hear from Mr. Glueckstein.

MR. GLUECKSTEIN: Thank you, Your Honor. Brian

Glueckstein for the debtors.

I think it is clear LayerZero is unhappy that they've been sued and that the debtor is seeking to recover amounts from them through an avoidance action. That adversary proceeding is pending.

I find the last statement particularly interesting, accusing the debtor of not proposing its plan of reorganization, and it's entirely in good faith because of their inability to participate, and it's not just them -- I'll get to that in a moment -- in the offer to resolve preference actions. Their reaction, apparently, to the litigation that they don't like is to try to stop this plan in its tracks.

But, Your Honor, with respect to the merits of this objection, everything that you heard, to the extent it's relevant to the plan process at all -- I'm not going to get into the adversary proceeding; those matters will come before Your Honor at the appropriate time -- the issues, with respect to the operation of the plan provisions is a plan confirmation issue. There's nothing about the way this plan is drafted that in any way, shape or form, would rise to the level of this plan being -- having (indiscernible).

The debtors, in Section 5.5 of the plan, and this is explained in the disclosure statement, are offering to settle and waive certain customer preference actions through

the plan balloting process. The debtors' offer to settle and waive those actions is not being made on account of these customer entitlement claims, so we submit that the cited provision under 1123(a)(4) is not applicable to this offer in any event.

The debtors are making this offer to waive and not prosecute customer preference actions against holders of customer entitlement claims who consent to and stipulate to the amount of their claim and vote to accept the plan. Each creditor's choice to do that, to accept that offer is voluntary. The debtors, of course, are using the plan voting and balloting process to effectuate the settlement offer, given the number of people at issue, but it is not in exchange for plan treatment or on account of claims against the debtors.

The debtor benefits from expediting and reducing the costs of claims administration and reconciliation with respect to ordinary course preference actions, but not every potential defendant is similarly situated and, thus, not every customer is eligible for the waiver of the customer preference actions. Not every customer is in a position where the debtor can determine to forego those actions on these terms and that is very clear in Section 5.5 of the plan and the related disclosure as to what the debtors are considering with respect to whether that settlement offer is

available or not. The suggestion that this is somehow singling out LayerZero or that substantially all of the creditors are going to get this treatment is simply not based on any facts that are before the Court, and counsel is correct, we are going to be making clear, the list of excluded customer preference actions in connection with the plan supplement. And the inclusion of that list is one of the reasons why we can move forward with the disclosure of the plan supplement and it includes that, amongst other information, to 14 days prior to the -- to no later than 14 days prior to the proposed objection deadline. So the creditors will be able to see if they are eligible to elect in to the preference settlement. But there's nothing about that settlement offer that is being done on account of the treatment of the claim that the customer is seeking to recover on against the estate.

LayerZero argued and asserted that there were ambiguities about this and we did add language clarifying that, one, any ending preference action, including the action against LayerZero, will be on the list of excluded customer preference actions and that those Defendants are not eligible for a release. As I mentioned, the debtors will include the list of excluded customer preference actions in the plan supplement, which we filed no later than two weeks before the proposed voting deadline. And we made clear that for those,

where the offer is made and accepted, that the debtors shall waive and not pursue those actions, so that once the offer is made by the debtor and accepted by the creditor, that that shall be the outcome, that it shall be waived, and we've added some clarifying language about that.

So we submit, Your Honor, there's nothing about the inclusion of these provisions in the plan that is problematic, but that issue is not before the Court today; that's potentially a confirmation issue.

The only question before the Court today is whether the inclusion of this provision, Section 5.5 of the plan, somehow renders the plan patently unconfirmable and we certainly submit that it does not.

THE COURT: Okay. Thank you.

Any response, Mr. Marker?

MS. MARKER: Dylan Marker of Proskauer Rose, on behalf of the LayerZero Group.

Your Honor, I think what's important to look at is who is this opportunity being provided to and why is it being given? Six billion of customer preferences, of potential customer preference claims, the debtors could have asserted in these cases. That's half of the cash that they say they have -- that they will have for confirmation. This is a tremendous amount of value that is being provided to customer preferences.

You can say it's for a settlement. You can try and frame it however you want, but the fact is that this is value of the estate that is not being provided to our clients, and for those reasons, we submit that the Court should not approve the disclosure statement because the plan is patently unconfirmable on that issue.

THE COURT: All right. Well, as I said, you gave me a lot of information, a lot of facts for which I have no evidence, which is why in a disclosure statement hearing, it's difficult to raise issues, especially bad faith. You've got to have something that gives me something to hang on to, and I have nothing to hang on to.

I mean, they've presented their plan. They're arguing it is proposed in good faith. You're telling me it's not proposed in good faith. It's a fact issue. It's an issue for confirmation. So I'm going to overrule your disclosure statement objection and you obviously have the right to raise whatever objections you want to when you get to confirmation, but come with evidence.

MS. MARKER: Thank you, Your Honor.

THE COURT: Okay.

MR. GLUECKSTEIN: Okay. Your Honor, by the debtors' count, that is the scope of the objections that need to be dealt with this morning, but I should probably pause there as to whether anybody else thinks I'm mistaken.

THE COURT: I think there were two -- weren't there two pro se objections to the disclosure statement?

MR. GLUECKSTEIN: I think we -- we certainly disclosed that we had received certain correspondence from the *pro ses*. I don't think we characterized them as raising disclosure issues, but, you're correct, Your Honor, they're not resolved.

THE COURT: Right. Well, let me just ask if there is any *pro se* claimant online who wishes to be heard on the disclosure statement?

(No verbal response)

THE COURT: Okay. I've heard nothing.

I did see the two pro se claimant filings and I agree with debtors' counsel, they didn't really raise any issues regarding disclosure, so those two objections are overruled, as well.

MS. GAMBALE: Alexis Gambale from Pashman Stein on behalf of the joint liquidators of Three Arrows Capital.

I have with me Rebecca Pressley from Latham & Watkins. She just wants to be heard on the matter.

THE COURT: Okay.

MS. PRESSLEY: Good morning, Your Honor.

For the record, Rebecca Pressley of Latham & Watkins on behalf of the joint liquidators of Three Arrows Capital.

We just wanted to state for the record, we had filed a limited objection to the disclosure statement and we worked with the debtors to resolve that objection, but we just wanted to note that we have a remaining issue with the plan, which is that the debtors should required to create a reserve in an amount determined with approval of the Court, as opposed to the more discretionary nature of the reserve that's built into the plan. However, we're going to reserve that argument for the plan confirmation stage, but we just wanted to note that for the record.

THE COURT: Okay.

MS. PRESSLEY: With that, unless you have any questions, nothing further from me.

THE COURT: No questions, thank you.

MS. PRESSLEY: Thank you.

MR. HACKMAN: Good morning, Your Honor.

May I please the Court? Ben Hackman for the U.S. Trustee.

Our office filed a limited objection and reservation of rights at Docket Item 17428, and I rise to confirm that that objection is resolved. There was one issue we had discussed with debtors' counsel yesterday into this morning. I understand the debtors will add a small, a relatively short provision to Section 3(c) of the disclosure statement addressing the Kroll data breach.

The language is acceptable to the U.S. Trustee and so we thank counsel for working with us to resolve our concerns. I would reserve the U.S. Trustee's rights and objections regarding plan confirmation.

Unless Your Honor has any questions, that's all I have.

THE COURT: No questions, thank you.

MR. HACKMAN: Thank you.

MR. GLUECKSTEIN: Your Honor, I can confirm, we did agree with the United States Trustee's Office, as I mentioned earlier, on the language that Mr. Hackman is referring to, and that will appear in the further redline that we submit of the disclosure statement.

THE COURT: All right. Thank you.

MR. LIEBERMAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. LIEBERMAN: Seth Lieberman of Pryor Cashman, LLP, counsel to the Celsius litigation administrator.

I'm here today with my colleague Andrew Richmond, along with our co-counsel from Cole Schotz. Patrick Reilley of Cole Schotz is here with me, as well.

We filed the disclosure statement objection, Your Honor, on June 5th. That can be found at Docket 16820. And I'm pleased to report that consistent with the amended agenda, that that disclosure statement objection has, in

fact, been resolved. It's been resolved by the inclusion of additional language in the disclosure statement itself, which can be found at Docket 18537.

In particular, Your Honor, the redline at 18538, there's language which begins on page 77 of that document. That is what has helped to resolve our disclosure statement objection.

And while I'm happy to report that we worked constructively and in good faith with the debtors' professionals in resolving this disclosure statement objection, like some of the others that just appeared before me, we, too, reserve our rights with respect to confirmation of this plan. We have raised certain claims and causes of action in the disclosure statement objection, which I understand that the debtors here vehemently object to, as they put it, however, we remain hopeful and optimistic that this can be resolved in advance of confirmation.

Nonetheless, Your Honor, I rise to reserve our rights in connection with confirmation. Thank you.

THE COURT: Okay. Thank you.

Anyone else?

(No verbal response)

THE COURT: All right. Well, that resolves all of the objections to the plan and disclosure statement and I will ask counsel to submit a -- you'll be submitting a

revised order.

MR. GLUECKSTEIN: We will and Ms. Kranzley can briefly address the solicitation in the order, and we will, as I said, Your Honor, address with a further revised draft of the plan and disclosure statement, reflecting the incremental changes discussed this morning.

MR. PASQUALE: Your Honor, this seems to be the right time.

THE COURT: All right.

MR. PASQUALE: Ken Pasquale for the Official Committee of Unsecured Creditors from Paul Hastings.

Your Honor, there were a couple of things said earlier. I know Your Honor has already overruled the objections, but I'd be remiss if I didn't stand and address just a couple of those comments.

First, our Committee is very proud of the fact that we have not, but for an exception or two, had to be before Your Honor to air our dirty laundry. Our advocacy has taken place in the negotiations that Mr. Dietderich mentioned. We have vigorously advocated our positions and, as I said, we are very pleased to be standing here now in support of the plan for confirmation, without having had to come to the Court very often to complain. We think that's commendable, not subject to criticism.

There was also a comment that our committee is

conflicted in representing customers. It's certainly the case that we have a fiduciary duty do all creditors across the various silos, but there's no conflict in how our Committee has operated and I think that's proven, again, by the plan that is now before the Court.

There are a number of things in the plan that the Committee was instrumental in negotiating and that includes the post-effective date governance agreement that was just reached, as well as components, such as the consensus interest rate and what is now being called, as it developed from negotiations, the supplemental remission fund concept.

What you see in the plan is the subject of successful negotiations. That doesn't mean that the Committee got everything that it wanted, that the debtors or other stakeholders got everything they initially negotiated. This was true negotiation, as should be, in the bankruptcy setting.

So, Your Honor, without burdening the record more, I did just want to stand up and say those couple of things.

THE COURT: Okay. Thank you, Mr. Pasquale.

MR. PASQUALE: Thank you.

MS. KRANZLEY: Good morning, Your Honor. Alexa Kranzley from Sullivan & Cromwell.

With respect to the solicitation procedures, the related materials and the proposed form of order, I'm pleased

to inform the Court that everything is fully consensual. We've worked it through with all the objecting parties, the U.S. Trustee, the UCC, and the Ad Hoc Committee.

I would note, Your Honor, that we've had a couple of changes since the version that was filed on Sunday. This is to add in that the publication notice will be with the New York Times national and international editions and CoinDesk, and then there's a few additional other cleanup changes.

Your Honor, I'm happy to walk through any of the solicitation dates, materials, packages, ballots, or answer any questions that you have.

THE COURT: No, I reviewed them. I appreciate it. Thank you.

MS. KRANZLEY: Thank you very much, Your Honor.

Then we ask that that be entered, and we'll submit -- similar to the plan and disclosure statement, we'll submit the revised version, as well, with the appropriate redlines.

THE COURT: Let me just confirm there's no objection?

(No verbal response)

THE COURT: Okay. It's approved.

MS. KRANZLEY: Thank you very much, Your Honor.

THE COURT: Submit a revised form of order.

MS. KRANZLEY: Your Honor, I think that leaves one

item on the agenda, Item No. 5 is the debtors motion for authorization for repayment of intercompany payables by debtor FTX Japan and the related release of claims that was filed at Docket 15654.

Just to give the Court some brief background and context for this motion, the debtors are looking for authorization for the payment by debtor Japan KK to its debtor parent Japan Holdings KK and other debtor affiliates to satisfy certain pre and post-petition intercompany claims totaling approximately $69.7 million. The repayment is necessary now as the debtors are exploring a sale of FTX Japan.

Last week, on June 20th, the debtors filed a motion at Docket No. 17923 seeking authorization to sell the equity interest of debtor Japan KK. The repayment of the intercompany payables is a closing condition of that proposed sale and was factored in by the purchaser determining the purchase price that was offered. After the repayment of these intercompany payables the debtors anticipate that FTX Japan will have cash and cash equivalents of approximately $33.5 million in excess of its liabilities.

Your Honor, we received two pro se objections to the motion and we filed a reply at Docket No. 17170. Both of these pro se claimants are alleging claims against FTX Japan and various other debtors in various amounts, and argue that

the debtors motion should be denied until resolution of their respective claims. Your Honor, the debtors are not seeking to adjudicate their claims in connection with this motion. They are not prejudicing the adjudication of their claims and anticipate having significant cash in excess to satisfy those claims to the extent that they're allowed.

Your Honor, there were two declarations submitted by Mr. Steven Coverick from Alvaraz & Marsal in support. One filed with the motion at Exhibit B to Docket 15654 and a supplemental declaration in support of the reply at Docket No. 17173. We ask that these declarations be admitted into evidence and Mr. Coverick is in the courtroom today.

THE COURT: Is there any objection?

(No verbal response)

THE COURT: They're admitted without objection.

(Coverick declarations received into evidence)

MS. KRANZLEY: Your Honor, unless you have questions for me I am happy to hear if either of the objectors are on the line to be heard.

THE COURT: Okay. Let's see if anyone wants to object to the motion for authorization of intercompany payments regarding FTX Japan. There were two objections filed, right?

MS. KRANZLEY: That is correct, Your Honor.

THE COURT: Are either of the objectors on the

line?

(No verbal response)

THE COURT: Okay. I have heard nothing. I did review the objections and the response from the debtors. I think the debtors are correct, to the extent there is a ballot objection they can be dealt with separately and there's going to be sufficient funds remaining at FTX Japan to pay those two objectors who have raised the objections. So, there is no prejudice to them in approving it. So, I will approve the order.

MS. KRANZLEY: Thank you very much, Your Honor. I believe those are the only items we have the agenda for today.

THE COURT: Okay. Anything else before we adjourn?

MR. HARVEY: Good morning, Your Honor, almost afternoon. For the record Matthew Harvey from Morris, Nichols, Arsht & Tunnell on behalf of the ad hoc committee of non-US customers of FTX.com.

Ms. Kranzley beat me up here before I could address -- stand to address our support of the disclosure statement approval. Our group, which is nearly $5 billion in claims now with approximately 75 percent of our members being original holders, like the creditors committee, has worked behind the scenes in order to get to the result we are today.

We think this is an important step in milestone in getting to plan solicitation in getting to the point where we can make distributions to customers as soon as possible. For those reasons, Your Honor, we support approval of the disclosure statement and the start of solicitation.

THE COURT: Thank you.

MR. HARVEY: Thank you, Your Honor.

THE COURT: Anything else?

(No verbal response)

THE COURT: Thank you all very much. We are adjourned.

(Proceedings concluded at 11:59 a.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 25, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams June 25, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable